

**SEAVAN CARRIER, INC., AND RENATO GACHO Y ABAD,  
PETITIONERS, VS. GTI SPORTSWEAR CORPORATION (FORMERLY  
GTI GARMENTS INTERNATIONAL CORP.) AND THE HON. ABELARDO  
M. DAYRIT, IN HIS CA...**

*G.R. No. 62130. September 28, 1984*

Ponente: GUTIERREZ, JR., J.

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**GUTIERREZ, JR., J.:**

This petition seeks the annulment of the order of the Court of First Instance of Manila, Branch XXXIX, dated July 26, 1982, denying the Urgent Omnibus Motion filed by herein petitioners which among others, sought the reconsideration of the trial court's decision dated September 14, 1981 and to quash the writ of execution issued in pursuance thereof.

The facts of the case are stated in the questioned order as follows:

"The records show that this case is for a sum of money and damages. After the issues had been joined, the case was set for pre-trial on January 18, 1977. There being no genuine issue as to any material fact, upon motion of the plaintiff, complemented with a supporting affidavit, a summary judgment was rendered by the Court on April 10, 1979, and consequently, plaintiff was allowed to present evidence on the allegation of damages pursuant to Rule 34 of the Rules of Court.

"Having failed to appeal within the period allowed by the rules, defendants filed a petition for Relief from Judgment on the ground that counsel for defendants failed to inform his client of the decision referred to earlier in this order. Exercising its sound discretion, and in the supreme interest of justice and equity, notwithstanding that the petition was filed beyond the period allowed by law said petition was given due course and the case was tried on the merits. The trial was concluded and conformably, the Court, on September 14, 1981, rendered a decision in favor of the plaintiff.

"On November 19, 1981, the records of this case were burned when the fourth floor of the City Hall of Manila was razed by fire. As a consequence, on January 19, 1982, a petition for reconstitution of the records was filed by the plaintiff. Said petition was set for hearing on January 28, 1982. Notwithstanding receipt of the petition, and a motion for a Writ of Execution, said defendants failed to appear. Apropos the reconstitution of the records, the same was concluded and/or terminated. Explicitly, on February 3, 1982, the motion for execution was granted by the court on February 12, 1982, an Urgent Motion to Quash Writ of Execution was filed by defendants followed by an Urgent Omnibus Motion seeking to quash the writ of execution issued earlier with Motion for Relief from Judgment, reconsideration of the decision and to set aside the order of January 28, 1982. The parties were heard on the Omnibus Motion until the incidents were submitted for resolution.

"From the records and arguments, together with the evidence adduced, the Court finds undisputed that the decision of September 14, 1981, was received by Atty. Alfonso Usison, defendants' counsel of record, on September 22, 1981, thru his daughter Susan Usison.

"In the Motion to Quash Writ of Execution the defendants claimed that they came to know the decision of

September 14, 1981, only on February 11, 1982, when the Writ of Execution was implemented by the sheriff. In other words, it is claimed that said defendant carrier was not notified or furnished with a copy of the decision by its counsel of record, Atty. Usison. Upon the other hand, Atty. Usison, claimed that he came to know of the decision only on February 12, 1982, when his attention was called by his client about the Writ of Execution which the sheriff sought to enforce.

"Having been apprised thereon, Atty. Usison made an investigation and came to know that while the decision was received in his law office on September 22, 1981, it was however received by his daughter Susan. Incidentally, at the time of receipt Susan was busy reviewing for examination and forgot to transmit the decision to her father immediately. The defendants contend that these circumstances constitute an excusable negligence.

"Quite explicit, is the fact that Susan Usison, is the daughter of Atty. Usison who is maintaining his law office at his residence at 1054 Concepcion Aguila Street, Quiapo, Manila. In the practice of his profession, said lawyer has no personal secretary and has allowed his children, most permissively, Susan, to receive Court papers for him as she had been receiving Court processes in the past, for his father. Susan Usison is a third year college student at the Mapua Institute of Technology taking up Industrial Management, and must have been aware of or should have known the importance of pleadings, orders, decisions and other documents, received by her in behalf of her father. More so that in the case at bar, what she received was not a simple order but a decision coming from this Court. At this stage, therefore, the Court is not inclined to believe that the failure of Atty. Usison to inform his client (defendants) of the adverse decision would constitute excusable negligence."

On July 26, 1982, the lower court denied the Urgent Omnibus Motion seeking to quash the writ of execution and also the Petition for Relief From Judgment for not being sufficient in form and substance. On August 18, 1982, the petitioners filed a Motion for Reconsideration but the same was denied on October 4, 1982.

In the instant petition, the petitioners assail the denial of the above motions which, in effect, affirmed the finality of the lower court's decision dated September 14, 1981, ordering the petitioner to pay the amounts stated in the dispositive portion:

"FOR ALL THE FOREGOING CONSIDERATIONS, the Court hereby renders judgment in favor of the plaintiff, ordering the defendants to pay the plaintiff jointly and severally from the filing of the complaint, the amount of P182,053.292, representing the value of the 100 cartons of denim jeans lost, plus the legal rate of interest; P160,155.00 representing Tariff and Customs duties paid by plaintiffs on the lost items; P2,400,000.00 representing losses in the goodwill of plaintiff; 20% of the total amount as and for Attorney's fees and to pay the costs of these proceedings.

"The counterclaim interposed by defendant carrier is dismissed for lack of evidence."

Except as to the amount of damages, we do not see any reason to disturb the questioned order of July 26, 1982, which affirmed the above decision. The lower court was correct in finding that "notice to counsel is notice to his client and the failure of counsel to notify his client of an adverse judgment would not constitute excusable negligence and therefore binding to his client." Furthermore, the petition for relief which was filed by the petitioners on February 15, 1982 was already the second, the first one having been filed after the summary judgment rendered by the lower court had already become final. The petitioners' excuse then was that they were allegedly not notified of the summary judgment by their former counsel, Atty. Garcia the same ground used to quash the writ of execution that the September 14, 1981 decision was not received by their new lawyer. As the lower court correctly puts it, "Evidently, the grounds relied on in these two petitions were the same grounds, as fraud, accident, mistake or excusable negligence, for the understandable failure of counsel to notify the defendants of an adverse judgment. x x x this pattern, usually resorted to by defendants would normally provoke the indulgence of the Court, but the circumstances obtaining, in this case, which is a repeat performance of a first

mistake tolerantly considered, could only be granted at the expense of the plaintiff. x x x"

Parenthetically, the complaint filed by the private respondent arose from the loss of 100 cartons of denim jeans intended to be exported abroad and valued at \$25,250.00. A total of 294 cartons of jeans in a container van had been loaded on the vehicle of Seavan Carrier, Inc. at the respondent's premises in Libis, Quezon for transport to South Harbor, Port Area, Manila. The 100 cartons of denim jeans never reached their destination but were diverted by the driver, in connivance with other persons, to a warehouse in V. Mapa Street, Manila. We see no error in the factual findings of the lower court that the petitioner is a common carrier, that 294 cartons of denim jeans were loaded for carriage to the piers in a sealed van, that 100 cartons were diverted and lost while en route to the piers, that the petitioner's driver signed a confession which he later disowned as secured through intimidation, and that the common carrier was responsible for the loss of the missing merchandise.

It appears from the facts of the case that the questioned decision of the trial court should ordinarily be considered final. However, considering that what is raised to us is a denial of a petition for relief from judgment, we are constrained to assume certiorari jurisdiction in the interest of justice and to pass upon the issue of damages. The award of P2,400,000.00 damages against a claim and prayer involving lost merchandise valued at only \$182,053.92 and with insufficient evidence to support is an act amounting to grave abuse of discretion calling for the exercise of our constitutional power to review and reverse or modify final judgments of inferior courts.

Hence, on January 12, 1983, this Court issued the following resolution, to wit:

"After deliberating on the petition, the comment filed by the respondents, and the petitioners' reply to the respondents' comment, the Court Resolved to GIVE LIMITED DUE COURSE to the petition only insofar as the allegedly excessive damages awarded by the respondent court in the amount of P2,400,000.00 representing purported losses in the goodwill of the private respondent are concerned and to REQUIRE the parties to submit simultaneously their respective memoranda on the above specific issue within fifteen (15) days from notice hereof. Except for the above issue, the petition is DENIED due course and, therefore, execution may issue upon finality hereof as to the judgment award of P182,053.92 representing the value of 100 cartons of denim jeans lost plus legal rate of interest; the P160,755.00 representing tariff and customs duties paid by the private respondent on the lost items; 20% of the said amount as attorney's fees; and costs of proceedings."

The petitioners contend that the evidence does not justify the award of P2,400,000.00 as damages representing losses in the goodwill of the respondents, the interest thereof, and attorney's fees. They state that even if these amounts of damages were left to the discretion of the court, it is entirely unconscionable.

In the case of *G. A. Machineries, Inc. v. Yaptinchay* (126 SCRA 87), we ruled that in order for damages under Article 2200 of the Civil Code to be recovered, the best evidence obtainable by the injured party must be presented, and thus, "the bare assertion of the respondent that he lost about P54,000.00 and the accompanying documentary evidence presented to prove the amount lost are inadequate if not speculative." We further ruled that:

"x x x To prove actual damages, it would have been easy to present the average actual profits realized by the other freight trucks plying the Manila-Baguio route. With the presentation of such actual income the court could have arrived with reasonable certainty at the amount of actual damages suffered by the respondent. We rule that the award of actual damages in the amount of P54,000.08 is not warranted by the evidence on record."

In the case at bar, the respondents failed to furnish the best evidence obtainable or even sufficient evidence in order to warrant the award by the lower court of such a generous amount of P2,400,000.00. The only basis for the award was the testimony of Mr. Hipolito, the manager of the international department of respondent GTI Sportswear Corporation. He testified that there was an order of 12,000 pieces of cotton jeans per month starting

January, 1978 up to the end of the year and that by December of the same year, the orders were completely cancelled by their customers who came to know about the loss. No document or written instrument was presented, whatsoever, to prove that there were really orders of that volume from the respondents' customers for the whole year of 1978, and as in the Yaptinchay case, no evidence was presented to show the average actual profits realized by the respondents during the previous years to enable the lower court to reasonably ascertain the amount of actual damages that the latter suffered. What was given in testimony were the corporation's possible gross earnings had its foreign customers not learned about the loss of the 100 cartons of denim jeans. The evidence cannot warrant the award of damages for the loss of anticipated profits, much less in the amount of P2,400,000.00 which is way above the value of the cartons of denim jeans actually lost. The complaint itself prayed only for unrealized profits due to the loss of 100 cartons of jeans, something not clearly proved.

WHEREFORE, the decision appealed from is hereby MODIFIED in that the award of actual damages representing the lost goodwill of respondent corporation in the amount of P2,400,000.00 is hereby DELETED. The decision is AFFIRMED in all other respects.

**SO ORDERED.**

Teehankee (Chairman), Melencio-Herrera, Plana, Relova, and De La Fuente, JJ., concur.

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